that kind, but is sold to others. The only way that you can get a monopoly on an article of manufacture, as rightly stated by the defendant, is by a patent.

"It is contended that the plaintiff originated certain phrases, . . . and that these phrases have caught the fancy of the people, so that they have become useful to the plaintiff as a means of selling his goods, and that by registering these phrases as an advertising device or 'form of advertisement,' under this statute, he has obtained the right in those phrases which he could not get in them as a trademark. But two difficulties arise which seem to me insurmountable. The plaintiff has no trademark right, because the device has not been used exclusively to denote his manufacture, and there is nothing about it which indicates that it was made by the plaintiff; and the special features cannot constitute such indication, as their value is destroyed as a mark of plaintiff's manufacture because not used exclusively in that connection. There can be no right to the exclusive use of those words or phrases, because they simply make statements of truth or fact. The statute gives a person a right to a form of advertising something of his own. Bill dismissed."

The decision is of value as being the only decision on this particular phase of this unique trademark statute, and because it holds that the designation of origin or ownership and a certain degree of originality are essential, even in a registered "form of advertisement." G. H. M.

CHOSES IN ACTION OF A BANKRUPT PASSING TO HIS ASSIGNEES. — The distribution of a bankrupt's property ratably among his creditors has always been a principal object of bankruptcy legislation. To effect this the statutes have aimed at giving the bankrupt's representatives control of all his valuable rights. By an early enactment the commissioners took what the bankrupt might "lawfully depart withal." 13 Eliza. c. 7. By 5 Geo. II. c. 30, the bankrupt yielded all rights whereby he "hath or . . . may . . . expect any profit, possibility of profit, benefit, or advantage whatsoever." Under such provisions, with the ancient admonition that the acts "shall be . . . largely and beneficially construed . . . for the aid, help, and relief of creditors," 21 Jac. I. c. 19, few valuable rights could be left to the bankrupt.

Nevertheless, apart from statutory exemptions, two kinds of choses in action have never been held to pass to the assignees. Rights deriving their value from future acts of the bankrupt remain to him, because, as Lord Mansfield remarked, "the assignees cannot let out the bankrupt." *Chipendall* v. *Tomlinson*, Cooke's Bankrupt Laws, 1st ed., 260. By a second qualification, based on principles analogous to the common law rules against maintenance, the bankrupt keeps rights of action for personal damages. *Benson* v. *Flower*, Sir W. Jones, 215; *In re Haensell*, 91 Fed. Rep. 355.

When one wrongful act injures both the person and the property of the bankrupt, there is considerable difficulty in applying these principles. If the damages arise *ex delicto*, apparently two actions can be brought, unless the result be greatly to harass the wrong-doer. *Brunsden* v. *Humphrey*, 14 Q. B. D. 141. In such a case a proper solution would be to allow one action to the assignee and one to the bankrupt. Yet for this no authority has been found except a *dictum* by Lord Bramwell in

Darley Main Colliery Co. v. *Mitchell*, 11 App. Cas. 127, 144. Where, however, the action is not divisible, probably the jury may be compelled to apportion the damages. Certainly this is true in many American states. 28 Am. & Eng. Enc. of Law, 1st ed. 395. The rules against maintenance to-day would hardly prevent suit on the whole claim by the assignee as trustee for himself and the bankrupt. This procedure appears free from technical and practical difficulties.

A recent English case is interesting as involving these questions. *Rose* v. *Bucket*, 17 T. L. R. 544. In an action for trespass to land and conversion of goods, the principal damages claimed were for personal annoyance. The trial judge, on application made before the jury were sworn, ordered the action stayed because the plaintiff was adjudged a bankrupt after the action accrued. The court of appeal reversed the decision, saying the "essential cause of action" was the "primary personal injury to the bankrupt." It would seem that on proper motions two actions might have been ordered, or, at least, that the damages might have been apportioned. The decision, however, follows earlier cases in making the character of the main portion of the damages the test of the rights of the bankrupt and his assignees. *Brewer* v. *Dew*, 11 M. & W. 625. It is to be regretted that the court was unable to find a more accurate rule.

PUBLICATION OF A LIBEL BY DICTATION TO A STENOGRAPHER. — The court of appeals of Maryland has recently decided that the dictation by the defendant of libellous letters to a stenographer by whom they are subsequently typewritten and transmitted to the plaintiff is a publication of a libel. *Gambrill* v. *Schooley*, 48 Atl. Rep. 730. In view of the present almost universal method of indirect correspondence the decision is of great importance to the business community. Little authority is to be found directly on the point. An English case is cited in support of the decision, but the Supreme Court of New York has reached an opposite result. *Pullman* v. *Hill*, [1891] 1 Q. B. 524; *Owen* v. *Ogilvie Pub. Co.*, 32 N. Y., A. D. 465.

As in the principal case, the plaintiff was the addressee of the libellous letter, the publication if any must have been to the person to whom the words were spoken. Hence the question involved must be distinguished from that raised in two other classes of cases. It is not a case of privileged communication. In those cases the same policy, which demands that the communications be privileged, requires that the method of making them be not narrowly restricted. And if incidentally, in the usual course of communication, a subsidiary publication be made, that too should be privileged. Here, at all events in the absence of malice, there should be no liability. *Boxsius* v. *Frères*, [1894] 1 Q. B. 842. On the other hand, the cases in which the defendant procures another to publish the former's words are not authorities for the principal case. There is always in those cases a publication of words *after* they have been reduced to writing, and the question is merely as to responsibility. *Pullman* v. *Hill*, *supra*, falls within this class. The defendant was there liable at all events for the publication to the plaintiff's clerks who read the letter. *Delacroix* v. *Thevenot*, 2 Stark. 63. The decision, therefore, not necessarily involving the point at issue, lends little support to the principal case.